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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

WINCHESTER-WESSELINK, LLC, Cross-complainant, Cross-defendant and Respondent, v. RICHARD VAN LOON, Cross-complainant, Cross-defendant and Appellant; DIANNE VAN LOON, Cross-defendant and Appellant; LEO WESSELINK et al., Cross-defendants and Respondents.	E070125 (Super.Ct.No. RIC1408039) OPINION

APPEAL from the Superior Court of Riverside County. Irma Poole Asberry, Judge. Affirmed.

Lizarraga Law Firm and Frank J. Lizarraga, Jr., for Cross-complainant, Cross-defendant and Appellant Richard Van Loon, and Cross-defendant and Appellant Dianne Van Loon.

Burkhalter Kessler Clement & George, Daniel J. Kessler, and Amber M. Sanchez for Cross-complainant, Cross-defendant, and Respondent, Winchester-Wesselink, LLC, and Cross-defendants and Respondents, Leo Wesselink, Betty Wesselink, Pauline Thornton and David Thornton.

Following a jury trial, cross-complainant, cross-defendant, and respondent Winchester-Wesselink, LLC (WW Cheese), along with cross-defendants and respondents Leo and Betty Wesselink, and Pauline and David Thornton (collectively referred to as respondents) prevailed on their claims for breach of fiduciary duty and interference with prospective economic advantage against cross-complainant, cross-defendant and appellant Richard Van Loon, and cross-defendant and appellant Dianne Van Loon (collectively the Van Loons).[1] Respondents claimed the Van Loons' actions harmed the family business by preventing the sale of the company, including 80 acres of land, which would have provided sufficient profit to discharge the company's debt and allowed a modest return on every owner's investment. The jury agreed and found the Van Loons liable for both compensatory and punitive damages.

On appeal, the Van Loons contend there is insufficient evidence to support (1) the award of punitive damages, (2) the verdict against Dianne, (3) the finding that Richard interfered with the sale of WW Cheese's assets, and (4) the award of compensatory

[1] Because a number of the parties and persons mentioned herein share common surnames, we use first names after initial introduction to avoid confusion. No disrespect is intended.

damages. They further challenge the trial court's admission of certain documentary evidence. Respondents seek to dismiss this appeal based on the disentitlement doctrine.[2] Although they make a compelling argument for application of the disentitlement doctrine, we have found no merit to any of the Van Loons' contentions and, thus, affirm the judgment.

I. PROCEDURAL BACKGROUND AND FACTS[3]

This case presents the perils involved in a multigenerational family business.

A. The Land and the Family.

The heart of this case is 80 acres of real property located in Winchester, California (the property). The property was originally owned by Jules Wesselink,[4] who was a dairy farmer. In the late 1980s, Jules sold the property to Pete Van Loon, his childhood friend and brother-in-law.[5] The purpose of the sale was to assist Pete in avoiding significant tax consequences by way of an Internal Revenue Code section 1031 property exchange. The

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[2] Respondents filed a motion to dismiss this appeal on May 31, 2019, and appellants filed an opposition on June 13. On June 18, this court reserved ruling on the motion for consideration with this appeal. As discussed, *post*, the motion is denied.

[3] On our own motion, we take judicial notice of prior related appeals: *Van Loon et al. v. Winchester-Wesselink, LLC et al.* (Oct. 18, 2006, E038707) [nonpub. opn.] (*Van Loon I*); *Van Loon et al. v. Thornton et al.* (*Winchester-Wesselink, LLC et al.*) (Aug. 22, 2012, E049942) [nonpub. opn.] (*Van Loon II*); and *Van Loon et al. v. Winchester-Wesselink, LLC et al.* (Dec. 3, 2014, E058826) [nonpub. opn.] (*Van Loon III*). (Evid. Code, §§ 452, 459.)

[4] Jules died on February 2, 2010. (*Van Loon III*, *supra*, E058826.)

[5] Pete is married to Jules's sister, Cornelia, and Richard is their son. (*Van Loon II, supra,* E049942.)

property was placed in the Van Loon Family Trust (the trust), and the trust leased back the property to Jules to continue his dairy operations. Because of Jules's assistance with Pete's tax issue, Pete agreed to give Jules an option to repurchase the property for $2.5 million (the option). The option was recorded in April 2001 and provided for a term of five years. (*Van Loon II*, *supra*, E049942.)

B. Creation of WW Cheese.

In the mid-1990s, Jules began making cheese. By 1997, Jules and his son Leo and son-in-law David had formed a limited liability company (LLC), WW Cheese, for the manufacture and sale of gouda cheese. Later, Betty, the Thorntons and the Van Loons became members of the LLC. (*Van Loon II*, *supra*, E049942.) The Van Loons acquired a small membership interest as a result of the option.

C. Decision to Exercise the Option.

In 2003 and 2004, when an opportunity to sell the property for a significant profit was presented, the members of WW Cheese held various meetings to discuss exercising the option. The Van Loons "vehemently" opposed it because they did not want the property taken out of their family trust for a below-market price of $2.5 million—third party purchasers were offering to purchase the property for $20 million. (*Van Loon II*, *supra*, E049942.) In the summer of 2004, a majority of the members voted to exercise the option. WW Cheese purchased the property for $2.75 million and executed a

promissory note secured by a first deed of trust on the property.[6] (*Ibid*.) WW Cheese made a down payment of $250,000, having borrowed the money from Hendrika and Michael Monteleone (the Monteleone loan).[7] The Monteleone loan was memorialized by an April 27, 2004 promissory note, secured by a second deed of trust on the property, and recorded on May 1, 2009. From 2004 to 2009, WW Cheese's debt to the trust was primarily funded by the Wesselinks and the Thorntons because WW Cheese did not have the income to satisfy its monthly obligation. (*Van Loon II, supra*, E049942.)

D. The Van Loons' First Action Against WW Cheese and the Majority Members.

On March 23, 2005, a multimillion dollar offer for the property was presented to the members. All of the members, except the Van Loons, approved a motion to start the process of accepting the offer. That same day, Richard served WW Cheese and the members with a lawsuit (*WW Cheese v. Van Loons et al.*, Super. Ct. Riverside County, 2005, No. RIC427504) in which the Van Loons challenged Jules's December 2004 transfer of 2.32 percent of his membership interest to the Wesselinks and the Thorntons, seeking injunctive relief to prevent the Wesselinks and the Thorntons from voting their shares (the first action). (*Van Loon I, supra*, E038707).) The trial court refused to issue a preliminary injunction or reallocate the members' interests in WW Cheese and, on appeal, we affirmed. (*Ibid*.) The Van Loons amended their complaint to allege defendants breached their fiduciary duty owed to the Van Loons when defendants took

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[6] The purchase price included the option price, plus the amounts owed for back rent and work Pete had done at the cheese plant.

[7] Mrs. Monteleone is related to the Wesselinks and the Van Loons.

actions that disproportionality benefited them. Following a jury trial, the Van Loons were awarded damages solely on their claim for breach of fiduciary duty, and we affirmed the judgment. (*Van Loon II*, *supra*, E049942.)

The parties stipulated that the membership interests in WW Cheese are as follows: Thorntons—42.38 percent; Wesselinks—37.25 percent; Van Loons—18.33 percent; Valerie Thomas—1.75 percent; and Cornelia Wesselink—0.29 percent (collectively referred to as the members).

E. The Majority Members Stop Funding WW Cheese.

Because of the legal costs associated with the first action, in 2009, the Thorntons and the Wesselinks stopped funding WW Cheese, which in turn stopped making the loan payments owed to the trust and, in 2011, stopped manufacturing cheese. In early 2013, the Van Loons demanded the members make additional capital contributions to pay off WW Cheese's debt to the trust. In response, a majority of the members began considering various options to pay WW Cheese's debts.

F. The Trust Files a Judicial Foreclosure, and the Van Loons' Second Action.

On August 1, 2013, the trust filed a judicial foreclosure action (*Van Loon v. Winchester-Wesselink*, Super. Ct. Riverside County, 2013, No. MCC1301105) against WW Cheese and junior lienholders (the Monteleones) for nonpayment of the secured debt on the property (the foreclosure action). In response, Leo called a meeting for October 29, 2013, to discuss selling the company and the property. The day before that meeting, the Van Loons initiated a derivative action on behalf of WW Cheese (*Van Loon v. Winchester-Wesselink*, Super. Ct. Riverside County, 2013, No. MCC1301604) (the

second action), based on many of the same allegations previously adjudicated in the first action. One month later, on November 25, 2013, a super majority of the members voted to dissolve WW Cheese and sell its assets, including the property. Also, in response to the trust's foreclosure action, in February 2014, the Monteleones initiated nonjudicial foreclosure proceedings.[8]

During the pendency of the second action, WW Cheese and the majority members served a request for production of documents on the Van Loons. In response, the Van Loons submitted boilerplate objections. When faced with a motion to compel, they dismissed the second action without prejudice.

G. A Majority of the Members Attempt to Sell the Property and WW Cheese.

In February 2014, Leo located a third party buyer to purchase the property and WW Cheese. The third party, Ronald Pietersma, owned the dairy land across the road from the property. Leo advised Pietersma that the property was encumbered by approximately $3 million in debt. On July 3, 2014, Pietersma, through Heritage Pride Farms, LLC (Heritage), presented WW Cheese with a letter of intent, offering to purchase the property and WW Cheese for $4.5 million, with $3.4 million immediately payable at closing. The sale to Heritage would keep Jules's cheese making legacy alive and afford sufficient funds to pay off WW Cheese's debt and provide over $1 million to distribute amongst the members, including the Van Loons. On July 29, 2014, a majority of the members, not including the Van Loons, voted to accept the letter of intent.

[8] Mrs. Monteleone told Leo that she would delay the foreclosure sale to allow time for dissolution of WW Cheese.

Richard offered to "match Pietersma's offer in his own way. [He claimed to have] 'horse power' but not cash."

H. The Van Loons Initiate Another Action and Thwart the Sale to Heritage.

On August 13, 2014, the Van Loons initiated a third action (*Van Loon v. Winchester-Wesselink*, Super. Ct. Riverside County, 2014, No. RIC1408039) against the members (Wesselinks, Thorntons, & Thomas) (the current action) based on the same underlying facts alleged in the second action. Aware of the pending litigation, Pietersma required every member to sign off on the sale before Heritage would proceed with its letter of intent. This requirement was made known to the Van Loons by letters sent to their attorney, as well as conversations between counsel for both Heritage and the Van Loons. On September 5, 2014, the Van Loons' attorney confirmed by email that "Richard Van Loon did not consent to the sale of the property. As he is challenging the ownership split, the current lawsuit will likely have an effect on the sale. [¶] Sorry to be the bearer of bad news on a Friday afternoon." The Van Loons' attorney also spoke to Heritage's attorney, conveying (1) the Van Loons' refusal to consent to the sale, and (2) Richard's claim to a 51 percent interest in WW Cheese. On September 25, 2014, counsel for the majority members sent a cease and desist letter to the Van Loons' attorney. Another letter was sent on October 29, 2014, seeking the Van Loons' consent to the Heritage sale before the Monteleone foreclosure sale set for November 6, 2014. Heritage did not purchase the property or WW Cheese because the Van Loons refused to consent to the sale.

I. The Monteleone's Nonjudicial Foreclosure.

The Monteleones proceeded with a nonjudicial foreclosure sale to protect their junior interest from the foreclosure action. On November 6, 2014, a third party purchased the property, subject to the first trust deed, for approximately $450,000. WW Cheese received $42,800 from the sale. The majority members requested the Van Loons' approval of the sale of WW Cheese's remaining personal property assets to Heritage for $100,000; however, the Van Loons refused the request, and the personal property assets were sold at public auction for $1.

J. The Van Loons Initiate the Fourth Action and Attempt to Avoid Providing Discovery Responses.

On February 17, 2015, the Van Loons sued WW Cheese, David, Betty, the Monteleones and others (*Van Loon v. Winchester-Wesselink*, Super. Ct. Riverside County, 2015, No. RIC1501825), disputing the validity of the nonjudicial foreclosure sale and the underlying debt (the fourth action). Separately, in the current action, a second amended complaint was filed on March 16, 2015, asserting that, inter alia, defendants breached their fiduciary duties by failing to make capital contributions to WW Cheese, by executing a second deed of trust to secure the Monteleone loan, by failing to provide the Van Loons with notice of member meetings, and by misusing company funds and voting to dissolve the company. In May 2015, defendants served the Van Loons with several discovery requests regarding both the current and fourth actions. One month later, the fourth action was consolidated with the current action.

On July 16, 2015, WW Cheese filed its cross-complaint in the current action against the Van Loons, asserting, inter alia, the Van Loons' breach of fiduciary duty and interference with prospective economic advantage by acting in their own self-interests and against the best interests of WW Cheese and the other members.[9] That same day, the Van Loons filed a first amended complaint in the fourth action; however, three weeks later, on August 5, 2015, they dismissed, without prejudice, their consolidated complaints in the current action, and again avoided responding to discovery requests.

On March 30, 2016, Richard initiated a cross-action (amended on June 13, 2016, Richard's cross-complaint) to WW Cheese's cross-complaint, alleging the same claims[10] that the Van Loons had previously alleged in prior actions, three of which (the 2d, current, & 4th actions) were dismissed without prejudice; however, Dianne was no longer named as a plaintiff.[11]

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[9] WW Cheese's cross-complaint was amended November 5, 2015 (WW Cheese cross-complaint).

[10] Richard asserted that, inter alia, "the cross-defendant members" (Wesselinks, Thorntons, & Thomas) breached their fiduciary duties by failing to make capital contributions to WW Cheese, by executing a second deed of trust to secure the Monteleone loan, by failing to provide the Van Loons with notice of member meetings, and by misusing company funds and voting to dissolve the company.

[11] As of May 27, 2016, the majority members of WW Cheese had incurred total expenses of $56,724.27 (including attorney fees) and costs of $898.27 regarding the second action, total expenses of $124,145.25 (including attorney fees) and costs of $13,565.80 for the consolidated actions, and attorney fees of $24,920.60 for Van Loons' cross-action.

K. The Operative Pleadings, and the Judgment on Phase I of the Trial.

The operative pleadings in the current action are WW Cheese's and Richard's cross-complaints. Proceeding to trial, Richard claimed the other members of WW Cheese breached their fiduciary duties to WW Cheese "by, among other acts, ceasing to fund the operation of the LLC." In contrast, WW Cheese claimed the Van Loons breached the LLC's operating agreement and their fiduciary duties "by committing various acts including commandeering the books and records of [WW Cheese] to the exclusion of the other members and refusing to approve the sale of [WW Cheese's] property to a third party after the other members voted in favor of dissolving the LLC." WW Cheese also alleged the Van Loons' refusal to approve the sale of the property to a third party was an intentional interference with an economic relationship of WW Cheese. By way of special verdict, the jury ruled against Richard on all of his claims, for WW Cheese on all of its claims, awarded WW Cheese $1,856.670 in compensatory damages, and found the Van Loons liable for punitive damages.

L. Phase II (*Punitive Damages*) *of the Trial.*

In preparation for the trial on punitive damages, on April 20, 2017, both Richard and Dianne received subpoenas to appear and produce financial information on April 28. Because the trial was continued, counsel for WW Cheese and the majority members served the subpoenas on the Van Loons' attorney, who confirmed there was no need to issue and serve either of the Van Loons another subpoena. On October 12, 2017, the trial judge inquired into the parties' time estimate for phase II of the trial, if necessary. Counsel for WW Cheese requested approximately two and one-half hours to review the

subpoenaed documents and to question the Van Loons on the stand. Informing the parties that the trial would begin without delay, the judge stated: "So I'm going to trust that you will have the mechanism set up so that the subpoenaed items are immediately available and can be immediately handed over. [¶] I have not seen any objections to review of the subpoenaed documents, so I'm sort of the mind that that's not going to happen. The time for doing it has, in my opinion, sort of lapsed. So it would be the case that we'd be ready to roll on that."

On October 16, 2017, in response to the trial court's inquiry as to whether the Van Loons had the necessary financial documents ready for production, the Van Loons' attorney stated, "I just don't think that we're going to be able to get to that today." The judge reminded counsel that "[w]e had a specific conversation last week about the subpoenaed documents. . . . [¶] I recall very specifically on Thursday I indicated that as far as I understood, there were no problems with the subpoena. My comment to all of you was that I was trusting that if there were problems with the subpoena, that I would have known about it at least by that time so that we could address those areas so that we could be ready to move forward and not have any holdup." Counsel for the Van Loons confirmed the judge's recollection and that he had discussed "that fact with my client and the production of those documents." However, counsel advised the court that Richard "did not bring the documents here today." He offered to provide testimony from the Van Loons; however, without the necessary documents requested in the subpoenas, counsel for WW Cheese and the majority members declined the offer, asserting "the law has consequences for that, and that's what it is. [¶] So we're ready to argue."

Trial on punitive damages proceeded with Richard's counsel, for the first time, objecting to service of the subpoena on Dianne, indicating that he did not recall seeing the subpoena addressed to her. The trial court admitted into evidence the subpoena addressed to Richard only. Because the court ordered phase II to begin without delay, the parties submitted closing arguments to the jury. Shortly thereafter, the jury awarded $2.5 million in punitive damages to WW Cheese.

On November 17, 2017, judgment was entered against the Van Loons, reflecting the unanimous jury verdict awarding WW Cheese $1,856,670 in compensatory damages and $2.5 million in punitive damages. The trial court awarded $98,957.80 in attorney fees, plus $1,340 in costs to WW Cheese, and $914,038.60 in attorney fees, plus $64,600.32 in costs to the majority members. Abstracts of judgment were recorded in various California counties.

M. Posttrial Motions.

The Van Loons' motion for judgment notwithstanding the verdict and motion for new trial were denied.

II. DISCUSSION

A. Motion to Dismiss the Appeal.

Before we address the merits of the Van Loons' contentions on appeal, we consider respondents' motion to dismiss this appeal based upon the disentitlement doctrine. Respondents contend the Van Loons' postjudgment actions demonstrate a "flagrant disregard of the trial court's orders which most recently culminated in formal orders of contempt against each of the Van Loons on May 17, 2019."

1. Further background information.

The Van Loons appeal the judgment; however, neither Richard nor Dianne have filed a bond to stay enforcement of the judgment, nor have they sought to stay its enforcement. Thus, respondents have attempted to collect the judgment. In response, the Van Loons' actions and representations in the trial court, the bankruptcy court, and this court have been designed to avoid paying any amount owed pursuant to the judgment. In general, the Van Loons have ignored postjudgment discovery, filed two bankruptcy petitions (in bad faith), disregarded several trial court orders for personal appearance at contempt hearings and debtor's examinations, disregarded trial court orders to respond to postjudgment discovery resulting in contempt orders and a three-day jail sentence, provided inconsistent information to the bankruptcy court resulting in summary dismissal of their petitions, and provided false information to the county sheriffs and state courts to frustrate enforcement of the judgment against them.

2. Analysis.

"An appellate court has the inherent power, under the 'disentitlement doctrine,' to dismiss an appeal by a party that refuses to comply with a lower court order. [Citations.] As the Supreme Court observed in *MacPherson v. MacPherson* [(1939)] 13 Cal.2d [271,] 277, 'A party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing his demands while he stands in an attitude of contempt to legal orders and processes of the courts of this state. [Citations.]' [¶] . . . '"Dismissal is not '"a penalty imposed as a punishment for criminal contempt. It is an exercise of a state court's inherent power to use its processes to induce compliance"' with a presumptively

valid order. [Citation.]" [Citation.] . . . [¶] Appellate disentitlement "is not a jurisdictional doctrine, but a discretionary tool that may be applied when the balance of the equitable concerns make it a proper sanction . . . ." [Citation.]' [Citation.] No formal judgment of contempt is required; an appellate court 'may dismiss an appeal where there has been *willful disobedience or obstructive tactics*.'" (*Stoltenberg v. Ampton Investments, Inc*. (2013) 215 Cal.App.4th 1225, 1229-1230.)

Courts have applied the disentitlement doctrine to a wide range of cases, including cases like the instant one where the appellant is a judgment debtor who has frustrated or obstructed legitimate efforts to enforce a judgment. (See, e.g., *Stoltenberg v. Ampton Investments, Inc., supra,* 215 Cal.App.4th at p. 1234 [defendants "repeatedly, and in contempt of sister state orders, frustrated the enforcement of the California judgment being appealed"]; *TMS, Inc. v. Aihara* (1999) 71 Cal.App.4th 377, 380 [appeal dismissed where, despite trial court's order, defendants willfully refused to respond to postjudgment interrogatories].) The merits of the appeal are irrelevant to the application of the doctrine. (See *Ironridge Global IV, Ltd. v. ScripsAmerica, Inc*. (2015) 238 Cal.App.4th 259, 266 [rejecting defendant's opposition to dismissal based on the merits, namely, defendant was not required to comply with the trial court's invalid order].)

Arguably, the Van Loons' conduct falls within the scope of the disentitlement doctrine. Nonetheless, we deny respondents' motion to dismiss and address the merits of the issues raised on appeal.

B. The Van Loons are Estopped from Asserting the Punitive Damage Award is Excessive.

The Van Loons contend there is insufficient evidence of their financial condition to justify an award of punitive damages in any amount. Respondents argue the Van Loons are estopped from challenging the award of punitive damages because they refused to produce evidence of their financial condition. We agree with respondents.

"A plaintiff who seeks punitive damages ordinarily must introduce evidence of a defendant's net worth. [Citation.] This rule is based on the fact that '[a] reviewing court cannot make a fully informed determination of whether an award of punitive damages is excessive unless the record contains evidence of the defendant's financial condition.' [Citation.] That is because whether a punitive damage award '"exceeds the level necessary to properly punish and deter"' depends upon a particular defendant's financial circumstances. [Citations.]

"However, a defendant who thwarts a plaintiff's ability to meet this obligation may forfeit the right to complain about the lack of evidence of his or her financial condition. In *Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597 . . . , the plaintiff prevailed on its claim for fraud following a court trial. The trial court then ordered the defendant to produce documents concerning his net worth for a hearing on punitive damages. The defendant did not comply with the order. [Citation.] The appellate court held that the defendant was therefore estopped from objecting to the absence of evidence of his financial condition. [Citation.] The court concluded: 'By his disobedience of a proper court order, defendant improperly deprived plaintiff of the opportunity to meet his

burden of proof on the issue. Defendant may not now be heard to complain about the absence of such evidence.' [Citation.]

"Similarly, in *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308 . . . , the court held that a defendant was estopped from arguing that the evidence of his financial condition was insufficient to support a punitive damage award because he failed to comply with a subpoena requiring him to produce records of his financial condition at trial. [Citation.] The court explained that 'for purposes of requiring attendance and the production of documents at trial, a subpoena is equivalent to a court order.' [Citation.] In light of the defendant's failure to comply with the subpoena, the court concluded that 'he is estopped from challenging the punitive damage awards based on lack of evidence of his financial condition or insufficiency of the evidence to establish his ability to pay the amount awarded.'" (*Garcia v. Myllyla* (2019) 40 Cal.App.5th 990, 995.)

The same rule applies here. In preparation for the trial on punitive damages, on April 20, 2017, both Richard and Dianne received subpoenas to appear and produce financial information on April 28. However, because the trial was continued, counsel for respondents served the subpoenas on the Van Loons' attorney, who confirmed there was no need to issue and serve either of the Van Loons another subpoena. Although the Van Loons concede service of the subpoenas, they contend that "there was no order issued by the court compelling [them] to produce financial documents on the continued trial date of September 18, 2017." But no order was required.

"The process by which the attendance of a witness is required is the subpoena. It is a writ or order directed to a person and requiring the person's attendance at a particular

time and place to testify as a witness. It may also require a witness to bring any books, documents, electronically stored information, or other things under the witness's control which the witness is bound by law to produce in evidence." (Code Civ. Proc., § 1985, subd. (a).) "In the case of the production of a party to the record of any civil action or proceeding . . . the service of a subpoena upon any such witness is not required if written notice requesting the witness to attend before a court, or at a trial of an issue therein, with the time and place thereof, is served upon the attorney of that party of person. . . . The giving of the notice shall have the same effect as service of a subpoena on the witness, and the parties shall have those rights and the court may make those orders, including the imposition of sanctions, as in the case of a subpoena for attendance before the court." (Code Civ. Proc., § 1987, subd. (b).) The notice "may include a request that the party or person bring with him or her books, documents, electronically stored information, or other things. The notice shall state the exact materials or things desired and that the party or person has them in his or her possession or under his or her control." (*Id*., at subd. (c); see *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, 1338 ["for purposes of requiring attendance and the production of documents at trial, a subpoena is equivalent to a court order"].)

Neither the Van Loons nor their attorney dispute the contention that the Van Loons' attorney specifically agreed the April 2017 service was sufficient for the purpose of the continued trial date. Rather, they assert that "there was no oral or written stipulation between the parties evidencing or memorializing that contention," or "any discussion on the record." Again, they are not disputing respondents' representation.

Moreover, they failed to object to or challenge such representation before the trial court by stating, under oath or on the record, that such representation was incorrect or false. Absent evidence to support their assertion, it is forfeited. (*In re Marriage of Vaughn* (2018) 29 Cal.App.5th 451, 460 [absent evidence to support appellant's contention, it is forfeited]; see *Fernandes v. Singh* (2017) 16 Cal.App.5th 932, 942-943 [a brief must contain """meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error"""].) Given the Van Loons' failure to either object (orally or in writing) or produce the documents requested, respondents were entitled to present argument to the jury regarding punitive damages without considering the Van Loons' financial condition. (*Garcia v. Myllyla*, *supra*, 40 Cal.App.5th at p. 997; see *Corenbaum v. Lampkin*, *supra*, 215 Cal.App.4th at p. 1338.)

C. The Admission of Exhibits 89 and 196 Did Not Violate Evidence Code Section 1152.

The Van Loons contend the trial court erred in admitting exhibits 89 and 196, which were "part of settlement discussions by and among the Van Loons, the Thorntons, and the Wesselinks, as well as their respective legal counsel" pertaining to the judgment the Van Loons had obtained in a prior jury trial in 2009. They argue Evidence Code section 1152 prohibits the admission of "'any statements' made in negotiation of a compromise, which would include the 'statements' in Exhibit 89 regarding the [Monteleone] deed of trust." They further claim admission of the exhibits was highly prejudicial because the reference to the Monteleone deed of trust was inaccurate and,

thus, failed to establish Richard's knowledge of such deed. We conclude the exhibits were properly admitted into evidence.

1. Further background information.

According to his amended cross-complaint, Richard claimed that in or about February 2014 he discovered the other members (excluding Dianne) of WW Cheese breached their fiduciary duties to WW Cheese by executing a deed of trust in 2009 to secure the Monteleone loan, since they "had no authority or consent from [WW Cheese] to cause said Deed of Trust to be executed and subsequently recorded." At trial, Richard swore that he had no knowledge of the Monteleone deed of trust until 2014.

Respondents challenged Richard's trial testimony by introducing two documents (exhibits 89 & 196), which demonstrate his knowledge of the Monteleone deed of trust in 2010: Exhibit 89 is a draft agreement, signed by the Van Loons. On page 3 of the agreement, there is a heading entitled, "Subordination of Monteleone Note." Under this heading, the agreement provides, "Whereas there is a February 6, 2009, Deed of Trust on the property securing a Note in the amount of Two Hundred and Fifty Thousand Dollars ($250,000.00) by Winchester Wesselink, LLC as Trustor and Michael Monteleone and Hendrika Monteleone . . . as Beneficiaries, currently occupies a second position security interest against the Property . . . ." The Monteleone deed of trust is also attached as an exhibit to the agreement. Exhibit 196 is a facsimile document dated June 10, 2010, sent from the Van Loons' attorney to respondents' former counsel. The document includes the draft agreement with the attached Monteleone deed of trust. Respondents sought admission of exhibits 89 and 196 to show knowledge (by both the Van Loons & their

attorney) of the Monteleone deed of trust as of June 2010. The Van Loons objected, arguing the exhibits were being used as a "statement" during the course of settlement, specifically "a tacit admission of something," which Evidence Code section 1152 "seeks to preclude." The trial court admitted redacted versions of the exhibits into evidence.

2. Analysis.

Generally, statements made in an attempt to compromise a dispute are inadmissible at the trial of the dispute. (*Caira v. Offner* (2005) 126 Cal.App.4th 12, 35-36.) The trial court's decision to admit evidence over an objection based on Evidence Code section 1152 is reviewed on appeal for abuse of discretion. (*Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 296.)

Evidence Code section 1152, subdivision (a), in relevant part, provides: "Evidence that a person has, in compromise . . . , furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain or claims that he or she has sustained or will sustain loss or damage, as well as any conduct or *statements made in negotiation thereof*, is inadmissible to prove his or her liability for the loss or damage or any part of it." (Italics added.) "Evidence Code section 1152 only prohibits 'the introduction into evidence of an offer to compromise a claim for the purpose of proving liability for *that claim*.'" (*Hawran v. Hixson*, *supra*, 209 Cal.App.4th at p. 297.)

Here, evidence relating to the statements made during the negotiations between the Van Loons, on the one side, and the Thorntons and Wesselinks, on the other, to resolve the judgment that the Van Loons had obtained in 2009, was offered not to prove the

liability of the Van Loons, but to impeach Richard's testimony that he did not become aware of the Monteleone deed of trust until 2014. (Compare *Carney v. Santa Cruz Women Against Rape* (1990) 221 Cal.App.3d 1009, 1023-1024 [letter of apology was admissible where not offered to prove liability of apologizing party] and *Hawran v. Hixson*, *supra*, 209 Cal.App.4th at pp. 296-297 [statements admissible not to demonstrate defendants' liability for wrongful termination, but to establish a binding agreement had been reached regarding the terms of employee's resignation for purposes of a different, subsequent, breach of contract claim] with *Caira v. Offner*, *supra* 126 Cal.App.4th at p. 36 [email "connected" to an offer to compromise is inadmissible to prove liability as to the reacquisition of stock] and *Hasler v. Howard* (2004) 120 Cal.App.4th 1023, 1026 [settlement conference statement discussing broker's commission is inadmissible on issue of broker's right to attorney fees]; cf. *Lemer v. Boise Cascade, Inc.* (1980) 107 Cal.App.3d 1, 9 [When applying Evidence Code section 1154, provisions that render settlements or offers of settlement inadmissible to prove the invalidity of the claim, do not apply where the evidence is not tendered as an admission of weakness by the party who settled or offered to settle, but for some other purpose.].)

We reject the Van Loons' claim that admission of the exhibits was highly prejudicial. Exhibits 89 and 196 were not the only evidence of Richard's knowledge of the Monteleone deed of trust prior to 2014. Mrs. Monteleone testified that she sent the deed of trust via facsimile to Richard on February 16, 2010. Also, the copy of the Monteleone deed of trust that was attached to the Van Loons' 2015 complaint contained a facsimile banner from the February 16, 2010 transmission from Mrs. Monteleone. Thus,

even if the Van Loons could establish that the trial court erred in admitting exhibits 89 and 196, they are unable to demonstrate prejudice. (See Evid. Code, § 353, subd. (b).)

D. Substantial Evidence Supports the Judgment.

The Van Loons contend there is insufficient evidence to support a judgment against Dianne, a finding that Richard interfered with the sale of WW Cheese's assets, and the award of compensatory damages.

"'"Where findings of fact are challenged on a civil appeal, we are bound by the 'elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court."'" (*Romo v. Ford Motor Co*. (2002) 99 Cal.App.4th 1115, 1137-1138, overruled on other grounds as stated in *People v. Ault* (2004) 33 Cal.4th 1250, 1272, fn. 15.)

1. The Verdict Against Dianne is Supported by Substantial Evidence.

The Van Loons assert WW Cheese "presented absolutely *no evidence whatsoever* against Dianne" on any of its claims, other than the fact that she was a member of the LLC. We disagree.

The following evidence of Dianne's participation in, and agreement with, Richard's actions was introduced: (1) Dianne was a member manager of the LLC; (2) according to the corporate minutes of the LLC's October 27, 2003 meeting, Dianne was acknowledged

for "setting up the new accounting system"; (3) also, on October 27, 2003, during the discussion of a renegotiation of the option, Dianne said the LLC was "in default of their lease option agreement and that [the Van Loon trust] would no longer honor [the LLC's] option to purchase the property"; (4) Dianne was "vehemently against" exercising the option and purchasing the property for $2.75 million; (5) Dianne was a plaintiff, along with Richard, in multiple lawsuits against WW Cheese and its other members; (6) Dianne signed the letter expressing the Van Loons' interest in purchasing another couple's interest in WW Cheese, and she alone signed the Van Loons' checks (three checks for $100,000 each) used to purchase such interest; (7) from 2013 through 2015, inclusive, the filed state tax returns for WW Cheese identified "Richard and Dianne Van Loon" as the "sole owners"; and (8) through the Van Loons' attorney, and their various lawsuits, Dianne refused to consent to the sale of the property and WW Cheese's assets to Heritage, maintaining that she and Richard were majority members of the LLC. Notably, *the record is devoid of any evidence of Dianne's opposition to Richard's actions* regarding WW Cheese and each of the lawsuits filed against WW Cheese and the other members.

In light of the above evidence, it was reasonable for the jury to infer that Dianne concurred in Richard's (her husband) statements, representations, and actions. Thus, we conclude substantial evidence supports the verdict against Dianne. (*City of Crescent City v. Reddy* (2017) 9 Cal.App.5th 458, 466 [we consider the """evidence in the light most favorable to the trial court, indulging in every reasonable inference in favor of the trial court's findings and resolving all conflicts in its favor"""].)

2. Richard Interfered with the Sale of WW Cheese's Assets.

The Van Loons challenge the jury's finding that Richard interfered with the sale of WW Cheese's assets to Heritage, arguing his "non-act of refraining to vote [in favor of the sale] should not be considered any sort of interference." They assert ignorance of Pietersma's requirement that "*all* members of the LLC" must agree to Heritage's letter of intent until October 29, 2014, eight days prior to the foreclosure sale. We conclude substantial evidence supports the jury's finding.

On July 29, 2014, a majority of the members of WW Cheese voted to accept Heritage's letter of intent to purchase the LLC and the property. The Van Loons did not participate in the vote. Rather, on August 13, 2014, they initiated another action against the other members to challenge their actions and seek a declaration that the Van Loons hold more than 50 percent interest in the LLC. Aware of the Van Loons' pending litigation, Pietersma conveyed, through his attorney, to the Van Loons' attorney, the requirement that every member of the LLC sign off on the sale before Heritage would proceed with its letter of intent. Specifically, on September 5, 2014, the Van Loons' attorney confirmed by email that "Richard Van Loon did not consent to the sale of the property. As he is challenging the ownership split, the current lawsuit will likely have an effect on the sale. [¶] Sorry to be the bearer of bad news on a Friday afternoon." Richard, through his attorney, conveyed the Van Loons' refusal to consent to the sale and their claim to 51 percent interest in WW Cheese. Because the Van Loons refused to consent to the sale, Heritage did not purchase the property or WW Cheese.

Contrary to the Van Loons' assertion, they (as evidenced by their attorney's communications) were well aware of Pietersma's requirement that *all* members of the LLC must agree to the sale to Heritage, but they continued to refuse to give consent. (See *Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 403 ["'[T]he client as principal is bound by the acts of the attorney-agent within the scope of his actual authority (express or implied) or his apparent or ostensible authority; or by unauthorized acts ratified by the client.'"]; *Streit v. Covington & Crowe* (2000) 82 Cal.App.4th 441, 446 [an attorney is an agent of the client and "agency principles are used primarily to indicate the nature and extent of the attorney's authority"].) By refusing to consent to the sale, the Van Loons intentionally interfered with a prospective business advantage of the LLC.

3. WW Cheese Suffered Damages in the Amount of $1,856,670 .

The Van Loons concede "the evidence presented to the jury supported the amount of $1,856,670 in damages"; however, they contend this amount should be reduced by $340,327.61 since they own 18.33 percent of WW Cheese. We disagree. The award of damages is an asset of WW Cheese, not each member. The members voted to dissolve WW Cheese. At this stage, the operating agreement requires the members to pay off all of the debts and liabilities of the company before they can distribute the remaining assets to themselves "in accordance with their positive capital account balances, after taking into account income and loss allocations for the Company's taxable year during which liquidation occurs."

III. DISPOSITION

The judgment is affirmed. Respondents are awarded costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
J.

We concur:

RAMIREZ
P. J.

MILLER
J.